

JAY O. AND JEWELL WADSWORTH

IBLA 70-81 Decided April 30, 1971

Public Sales: Applications – Public Sales: Sales Under Special Statutes

An application to purchase public land under the Omitted Lands Act of May 31, 1962, Pub. L. No. 87-469, 76 Stat. 89, is properly rejected when the land has not been offered for public sale.

IBLA 70-81 : Idaho 2608

JAY O. and :
JEWELL WADSWORTH

:
Application to purchase
: public land rejected
:
: Affirmed

DECISION

Jay O. and Jewell Wadsworth have appealed to the Secretary of the Interior from a decision of the Office of Appeals and Hearings, Bureau of Land Management, dated July 11, 1969, which affirmed a decision of the Boise, Idaho, land office, dated March 27, 1969. The decisions below rejected the appellants' application to purchase lots 11 and 14, section 5, T. 3 S., R. 35 E., B.M., under the Omitted Lands Act of May 31, 1962, Pub. L. No. 87-469, 76 Stat. 89.

The lots under consideration are on an island in the Snake River. The Snake River courses southwesterly from the City of Blackfoot, Idaho, for approximately 2 miles until it reaches this island. The appellants own all of the island except for the area covered by lots 11 and 14. The two lots appear to comprise roughly one-third of the island.

The Omitted Lands Act authorizes the Secretary, in his discretion, to sell certain omitted lands, including the two lots in question, located in Idaho and in the vicinity of the Snake River. The Act gives a preference right of purchase to persons who meet specified "color of title" or "riparian owner" conditions. Before any lands may be sold under the Act, a notice that the lands will be offered for sale must be published in the Federal Register and in a local newspaper. 43 CFR 2546.1, 35 F.R. 9595 (1970). The lots in question have not been offered for sale and no publication has occurred. Nevertheless, appellants filed the subject application on November 11, 1968.

The decisions below rejected the application for the reasons that the lots have not been offered for sale under the Omitted Lands Act and the lots have sufficient public value to warrant retaining them in public ownership. The latter reason is based upon Bureau

of Land Management findings that the lots provide good wildlife habitat and excellent recreational potential, and that a portion of the lots has tillable soil which can be used to produce food crops for supplemental wildlife feed. Also, lot 11 was not offered for sale for the additional reason that it was included in an application for a withdrawal, Serial No. Idaho 012996, filed by the Bureau of Sport Fisheries and Wildlife on November 21, 1961.

It is clear from the record that the lots in question have not been offered for sale. Whether or not lands are to be offered for sale under the Omitted Lands Act is a matter committed wholly to the discretion of the Secretary. It is well established that when an application to purchase public land is rejected for given reasons, as in the instant case, it will not be reversed in the absence of substantial and persuasive evidence that the basis for the rejection was erroneous. Lawrence R. Hawley, A-29187 (May 7, 1964); Arndel Corporation, A-29165 (May 7, 1964); Jack M. Gardner, Melvin Church, A-30029 (March 25, 1964); Edward J. Rowley, A-28146 (May 24, 1960). Appellants have not produced such evidence.

Having determined that the lots in question have not been offered for public sale, we need not consider the other matters presented by appellants in this appeal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Francis Mayhue, Member

We concur:

Newton Frishberg, Chairman

Anne Poindexter Lewis, Member.

